As to the procedure used to strike out the plaintiff's writ and statement of claim, the application was not made on the ground that there was no reasonable cause of action (ground (a)) because no evidence would have been admissible on an application under that ground. The second to fifth defendants applied under O 18 r 19(1) on the ground that the proceedings were vexatious (ground (b)) or, alternatively, were otherwise an abuse of the process of the court (ground (d)). A proceeding is said to be vexatious when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result: *Jowitt's Dictionary of English Law*. Abuse of the process of the court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive: *Words & Phrases Judicially Defined*. The plaintiff's action against the second to fifth defendants was clearly unsustainable, and the plaintiff could not possibly hope to achieve any practical result. Neither was the action instituted in good faith, as the plaintiff's solicitors must have known that the second to fifth defendants had no choice but to hand over the 10% deposit of $28,000 and the cashier's orders to their client, the first defendant. In my opinion, the plaintiff's action in joining the second to fifth defendants was meant to embarrass them, and that being so, an order to strike out under O 18 r 19 was properly made, to obviate the need for a full trial. I would therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Ng Thin Wah & Partners; Goh Poh & Partners.*

Reported by *Liu Hern Kuan*

Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 83 OF 1989
CHAN SEK KEONG J
11 DECEMBER 1990

Civil Procedure — Appeal — Right of appeal from decision of district judge — Power and jurisdiction of registrar of subordinate courts — Rules of the Subordinate Courts 1986, O 32 & O 55 — Subordinate Courts Act (Cap 321, 1985 Ed), ss 47 & 69 — Supreme Court of Judicature Act (Cap 322, 1985 Ed), ss 21 & 34

The appellants appealed against the decision of the district judge who allowed an appeal against the decision of the deputy registrar striking out the amended defence and counterclaim. The respondents took a preliminary objection to the appeal on the ground that the decision of the district judge under O 55 of the Rules of the Subordinate Courts 1986 ('the Rules') was final.

Held, dismissing the preliminary objection:

(1) It was settled law that a rule making power regulates procedure and does not confer jurisdiction or power where there is none. The Rules Committee could not therefore, by exercising s 69 of the Subordinate Courts Act, make the registrar's decisions unappealable in any circumstances.

(2) The jurisdiction and powers exercised by the registrar are those conferred on the district court and exercisable by the registrar. By virtue of s 21 of the Supreme Court of Judicature Act the decisions of the district court and therefore the registrar may be appealed to the High Court.

(3) The district court has no appellate jurisdiction. Order 55 merely gives effect to the internal organization of judicial work whereby the Senior District Judge permits the registrar to exercise the jurisdiction and powers of the district court and reserves to the district judge the power to hear 'appeals' from the registrar.

(4) The nature of the jurisdiction of the district judge in hearing appeals from the registrar under O 55 was analogous to appeals from the decisions of the registrar of the High Court to the judge-in-chambers. It was by way of a rehearing and the matter was to be treated afresh.

Case referred to

1 *Goh Siam Yong* v *Zacharia Norman Augustine & Anor* [1989] 3 MLJ 406 (refd)

Legislation referred to

Subordinate Courts Act (Cap 321, 1985 Ed) ss 34, 47, 69
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21
Subordinate Courts Rules 1986 O 18, O 32, O 55

Steven Ang for the appellants.
Peter Yap for the respondents.

Cur Adv Vult

Chan Sek Keong J: This was an appeal by the plaintiffs/appellants against the decision of the district judge allowing an appeal against the decision of the deputy registrar striking out the amended defence and counterclaim under O18 r 18(1) of the Subordinate Court Rules 1986. I allowed the appeal in part.

Counsel for the defendants took a preliminary objection to this appeal. He submitted that the plaintiffs had no right of appeal on the ground that the decision of the district judge was final as between the parties by reason of O 55 r 1(5). That rule provides that:

R1 (1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 111B to attend before the Judge on a day specified in the notice or on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be filed within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this Rule shall not operate as a stay of the proceedings in which the appeal is brought.

(5) The decision of the Judge in Chambers under this Rule shall be final.

R2 There shall be no appeal from a Judge in any interlocutory application except with the leave of the Judge.

I have in my judgment in *Goh Siam Yong* v *Zacharia Norman Augustine & Anor*[1] decided that if r 1(5) had the effect of denying a party the right to appeal to the High Court; it was ultra vires s 47 of the Subordinate Courts Act (Cap 321 1985 Ed)('Cap 321') read with s 21 of the Supreme Court of Judicature Act (Cap 322 1985 Ed) ('Cap 322') *which section made no distinction between a final judgment and an interlocutory judgment*, unlike s 34 of Cap 322. Counsel for the defendants, quite properly, invited me to reconsider my decision in the light of the arguments of Mr Khoo Oon Soo, the then district judge (now Registrar of the Subordinate Courts), contained in a case note published in [1989] 3 MLJ cxxiv. Counsel, however, was not aware of another case note, arguing to the contrary, by Mr Tan Kay Kheng published in [1990] 1 MLJ lxxxvii. Counsel contended that Mr Khoo's analysis of the relevant statutory provisions was correct and that mine was wrong.

The argument of Mr Khoo is set out in the following paragraph of his case note:

> Section 21 [of Cap 322] clearly allows for the right of appeal from '... a *decision* of a District Court ... in any suit or action ...'. It seems to me that the 'decision' envisaged by legislature must obviously refer to those decisions which the district court is competent to make, as empowered by Part IV of the Subordinate Courts Act. Part IV gives a detailed list of the civil jurisdiction of a district court, all of which are original jurisdiction. The Subordinate Courts Act does not provide appellate jurisdiction for the district court. That being the case, s 21 above cannot possibly envisage an appellate decision of a district court or, for that matter, a district judge. To that extent, s 21 contains a lacuna. If this argument is accepted, it then follows that O 55 r 1(5) cannot be an ultra vires provision. In fact it would be *intra vires* the Subordinate Courts Act and s 21 of the Supreme Court of Judicature Act.
>
> Arising from the lacuna described above, a more fundamental issue arises, viz the right of appeal against the decision of a registrar of the subordinate courts. The right of appeal is a creature of statute. Section 21 does not permit appeals against a registrar's decision!

Put in syllogistic form, the argument is as follows:

(1) s 21 confers a right of appeal against any decision of the district judge which it is competent to make, ie a decision made in the exercise of its original jurisdiction;
(2) a decision of the district judge made under O 55 is a decision made in the exercise of his appellate jurisdiction;
(3) therefore, s 21 does not apply to a decision of the district court in the exercise of its appellate jurisdiction, and, it follows, s 21 does not give a party a right of appeal against such a decision!

The syllogism contains the startling premise that the district judge has appellate jurisdiction under O 55 but none under s 21. Where does this appellate jurisdiction come from? Mr Khoo says that there is a lacuna in s 21, but that 'probably' the lacuna is dealt with under s 69(3)(c) of Cap 321 which provides as follows:

> (3) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to
> ...
> (c) prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a District Judge or Magistrate in court or in chambers may be transacted or exercised by the registrar (*including provisions for and concerning appeals from decisions of the registrar*).

In my view, there is no lacuna in s 21 of Cap 322 and s 69 of Cap 321 is merely an ordinary rule making power. It is settled law that a rule making power regulates procedure and does not confer jurisdiction or power where there is none. Section 69(3)(c) provides for the making of rules for and concerning appeals from decisions of the registrar, but that is not the same thing as saying that it enables the Rules Committee to make the registrar's decisions unappealable in any circumstances. If Mr Khoo's analysis is correct, it would then be within the powers of the Rules Committee to make the registrar of the Subordinate Court a court of first and last resort, by the simple expedient of providing in the Rules that there shall be no appeal from the decisions of the registrar! This conclusion is so absurd that there must be something wrong with the premise.

The other absurdity, if Mr Khoo is right, is that by virtue of O 55 r 2 (whose validity is also in doubt since it is not founded on any substantive provision in Cap 321), there is an appeal from the district judge with respect to any interlocutory application with his leave, but there is no appeal at all if his judgment is final!

I start from the basics. The jurisdiction of the registrar of the subordinate courts is provided for in s 34 of Cap 321 which reads:

> Any jurisdiction and powers conferred on a District Court by this Act or any other written law relating to civil proceedings may be exercised to the extent authorised by this Act or any other written law or Rules of Court, by the registrar.

Order 32 r 8 of the 1986 Rules gives effect to s 34 by providing as follows:

> The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these Rules may be transacted and exercised by a Judge in Chambers except such business, authority and jurisdiction as the Senior District Judge may, with the concurrence of the Chief Justice, from time to time direct to be transacted or exercised by a Judge in person or as may by any of these Rules be expressly directed to be transacted or exercised by a Judge in person.

Section 34 read with O 32 r 8 tells you the nature of the registrar's jurisdiction. It is not primary but substituted jurisdiction. The jurisdiction and powers are *conferred* on the district court but are *exercisable* by the registrar by virtue of O 32 r 8, unless the district judge, with the concurrence of the Chief Justice decides otherwise. The jurisdiction and powers remain the same whether they are exercised by the district court or the registrar. Therefore, when s 21 of Cap 322 provides that there shall be an appeal from a decision of the district court, it has to be construed as applying to a decision of the registrar when exercising jurisdiction and powers as a substitute for the district judge. It is not so construed, then O 14 r 12 (permitting an appeal from the registrar to the High Court) would have no statutory justification. That is also why I pointed out in my previous judgment that what was merely an administrative arrangement for the allocation of judicial work (whereby the Senior District Judge allows the registrar to exercise the jurisdiction and powers of a district judge in certain matters) should not affect the right or appeal given by s 21 of Cap 322.

The nature of the jurisdiction of the district judge in hearing appeals from the registrar under O 55 is not the same as that in an appeal from the district court to the High Court or from the High Court to the Court of Appeal. Order 55 merely gives effect to the internal organization of judicial work whereby the Senior District Judge in permitting the registrar to exercise the jurisdiction and powers of the district court reserves to the district judges the power to hear 'appeals' from the registrar. It is, in substance, a form of confirmatory jurisdiction. In theory, the Senior District Judge has allowed the jurisdiction and powers of the district court to be exercised in two stages, one at the level of the registrar and the other at the level of the district judge. Section 69 of Cap 321 read with O 55 appears to permit this bifurcation. In principle, there is nothing wrong with this scheme so long as it is not treated as two separate and distinct jurisdictions. This means that there can be an appeal from the registrar direct to the High Court (as in O 14 r 12) or from the registrar to the district judge (as in O 55) and then to the High Court. Both arrangements are consistent with the principle that the jurisdiction and powers of the district court are the same whether they are exercised by the district judge or the registrar as a substitute for the district judge.

The situation in O 55 is analogous to 'appeals' from the decisions of the registrar of the High Court to the judge-in-chambers. In such appeals, the judge-in chambers is not exercising 'appellate' jurisdiction in the same sense when it hears appeals from the district court. This view is consistent with the rule that an appeal from the registrar of the High Court to the judge-in chambers is by way of an actual rehearing of the application and the judge treats the matter afresh as though it came before him the first time, and the practice of allowing fresh affidavit evidence in such appeals.

In my view, Mr Khoo's arguments are based on a failure to appreciate the jurisdictional hierarchy of the courts within the judicial system, and in particular the nature of the 'appellate' jurisdiction of the district judge when hearing an 'appeal' from the registrar. The district court has no appellate jurisdiction. It is this misapprehension that has led him to this three conclusions, all of which are untenable: (a) that there is not right of appeal against a registrar's decision to the High Court on the ground that s 21 of Cap 322 has not provided for it, (b) that there is no right of appeal to the High Court against a district judge's decision from an appeal from the registrar on the ground that s 21 does not provide for it, and (c) that there is a right of appeal to the district judge from the registrar's decision on the ground that O 55 (made under s 69(3) of Cap 321) has provided for it.

For the above reasons, I rejected the submissions of counsel based on Mr Khoo's arguments and ruled that his preliminary objection had no merit.

Preliminary objection dismissed.

Solicitors: *Godwin & Co; Peter Yap & Co.*

Reported by *Mathavan Devadas*